

D.T.E. 02-52

Investigation by the Department of Telecommunications and Energy into the Petition of Bay State Gas Company for approval of a Gas Sales Agreement with EnCana Corporation.

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## I. INTRODUCTION

On September 16, 2002, Bay State Gas Company (“Bay State” or “Company”), pursuant to G.L. c. 164, §§ 93 and 94A, submitted for approval by the Department of Telecommunications and Energy (“Department”) a Gas Sales Agreement (“Sales Agreement”) that the Company executed with EnCana Corporation (“EnCana”),<sup>1</sup> an Agency Agreement (“Agency Agreement”) and a Management Services Agreement (“Management Services Agreement”) that the Company executed with Northeast Gas Markets LLC (“NEGM”).<sup>2</sup> The Sales Agreement, dated July 11, 2002, replaces a supply contract between Bay State and Boundary Gas, Incorporated<sup>3</sup> (“Boundary”), which expires January 15, 2003. The Agency and Management Services Agreements, dated July 11, 2002 require NEGM to perform the necessary solicitation of bids to replace the expiring Boundary contract as well as to perform services functions in connection with the dispatch and other operational functions associated with the Sales Agreement.

On October 24, 2002, pursuant to notice duly issued, the Department conducted a public hearing to afford interested persons the opportunity to comment on Bay State’s proposal.

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<sup>1</sup> EnCana Corporation was formed from the merger of PanCanadian Energy and AEC Oil & Gas Company (Exh. BSG-1, at 7-8).

<sup>2</sup> NEGM is a project development and gas supply contract management firm located in Beverly, Massachusetts (Exh. BSG-1, Petition, at 2).

<sup>3</sup> Boundary is a FERC-regulated consortium of Northeast U.S. local distribution companies, including Bay State, formed in 1980 to facilitate the procurement of incremental supplies of natural gas to meet market growth. Boundary purchases and resells the gas to its Northeast customer group local distribution companies at the Niagara Falls import point. All the aspects of Boundary gas supply contract, including operations, invoicing, etc. are managed by NEGM (Exh. BSG-1, Petition, at 2).

The Department granted the Petition to Intervene of the Division of Energy Resources (“DOER”). On November 4, 2002, the Department held an evidentiary hearing. Bay State presented the testimony of Francisco C. DaFonte, director of energy supply services, Bay State. The evidentiary record consists of forty (40) exhibits, consisting primarily of Bay State’s responses to information and record requests. On November 8, 2002, DOER filed its Initial Brief. On November 11, 2002, Bay State filed its Initial Brief, and, on November 15, 2002, filed its Reply Brief.

## II. DESCRIPTION OF THE COMPANY’S PROPOSAL

The Company submitted agreements to replace the current Boundary supply (Exh. BSG-1, at 2). The Boundary replacement supply includes the Sales Agreement with EnCana, the Agency Agreement with Northeast Gas Markets (“NEGM”), and the Management Services Agreement with NEGM (*id.*). The Company indicates that Bay State’s decision to enter into an arrangement with EnCana is consistent with the Department’s precedent and standard of review for acquisition of commodity resources (*id.* at 3).

The Company states that the Sales Agreement includes an initial term<sup>4</sup> commencing on January 15, 2003 and ending on February 1, 2003, and a primary term commencing on February 1, 2003 and ending on April 1, 2005 (Exh. BSG-1, at 3). The Company asserts that the daily contract quantity (“MDQ”) will be 10,471 dekatherms (“Dth”) per day, with Bay State retaining the flexibility to reduce the MDQ by as much as 100 percent no later than five business days prior to the beginning of each month. The pricing of the initial term is tied to the

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<sup>4</sup> The initial term takes into account the mid-month expiration of the current Boundary agreement (Exh. BSG-1, at 3).

“Midpoint Price” as set forth in the Daily Price Survey published by GAS DAILY for deliveries at Niagara in the applicable month (id.). The pricing for the primary term is also tied to the Gas Daily Price Guide published monthly by GAS DAILY for deliveries at Niagara in the applicable month (id.).

The Company indicates that the Agency Agreement authorizes NEGM to act on Bay State’s behalf as administrative agent for all purposes under and with respect to the individual gas supply agreements with EnCana (Exh. BSG-1, at 3).<sup>5</sup> The Company asserts that the Management Services Agreement details all services to be rendered by NEGM for the express purpose of acting as administrative agent for the Company (id. at 4). Bay State states that it will pay a fee equal to the product of three components: (1) an administration rate of \$.0128 per Dth, (2) the MDQ under its respective Sales Agreement, and (3) the number of days in such month, without regard to actual quantities of gas delivered to such customer for that month (Exh. BSG-1, at 4; Exh. BSG-4). The Company indicates that the Agency Agreement and the Management Services Agreement allow the Company and the other participating local distribution companies (“LDCs”) to jointly manage the EnCana supplies in an efficient manner, and to take advantage of the NEGM’s expertise in handling transactions of this nature (Exh. BSG-1, at 5).

The Company indicates that in the Spring of 2001, Boundary and its participating

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<sup>5</sup> These activities include submitting nominations to EnCana on behalf of the local distribution company, receiving invoices and making payments, declaring or receiving notice of force majeure conditions on behalf of the local distribution company, as well as all other necessary actions related to the Sales Agreement, including preparation and filing of U.S. Customs forms and payments as well as other operational reports (Exh. BSG-1, at 3-4; Exh. BSG-3).

customers organized a Boundary Renewal Working Group ("Working Group") to develop a process for securing a competitive replacement gas supply, once the original contract expired in January 2003 (Exh. BSG-1, at 5). The Request for Proposals ("RFP")<sup>6</sup> was issued on November, 2001. Responses to the RFP were due by December 20, 2001, to enable the evaluation of the RFPs prior to the decision on the Tennessee Gas Pipeline Company transportation contract renewal (id. at 6).<sup>7</sup> According to the Company, nine of the thirteen companies responded to the RFP (id. at 9).<sup>8</sup> One of the nine submitted bids was incomplete and was eliminated from consideration (id.).

For the purpose of evaluation, all the bids were sorted out as follows: (1) bids were standardized to a NYMEX price (Exh. BSG-1, at 10; Exh. BSG-8, at 1); (2) bids were separated into 14-month term bids and 26-month term bids; (3) bids were further subdivided into the delivery points offered for that term (i.e., Niagara, Dracut, and city-gate services); and (4) bids were further subdivided into base load and swing flexibility options (Exh. BSG-1, at 10; Exh. BSG-9). The Company states that all bids were assessed using the price of the service offered and the following non-price criteria: security of supply (35 percent), bid

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<sup>6</sup> The RFP was sent to the following companies: Aquila Energy, BP Amoco, Coral Energy, Duke Energy, Dynergy, El Paso, Imperial Oil, Mirant, PanCanadian Energy Services (subsequently merged with AEC Oil and Gas Company to form EnCana), PG&E National Energy Group, Reliant Energy Services Canada, Sempra Energy Trading, and Williams Energy Marketing & Trading (Exh. BSG-1, at 7-8).

<sup>7</sup> The majority of the transportation contracts required that shippers give the pipeline notice of their intention to renew one year in advance of the expiry (Exh. BSG-1, at 6).

<sup>8</sup> The companies that responded were: Coral Energy, El Paso, Aquila Energy, Duke Energy, Dynergy, BP, Imperial Oil, Mirant, and PanCanadian Energy Services (Exh. BSG-1, at 9-10).

flexibility (20 percent), and supplier viability<sup>9</sup> (15 percent) (Exh. BSG-1, at 11; Exh. BSG-11).

Based on those criteria and sorting sequence, three top bids were selected, including EnCana (Exh. BSG-1, at 11; Exh. BSG-11). Bay State indicates that the bids at Niagara were the most competitive (*id.*). The Company asserts that the Working Group decided to request that the three top bidders “refresh” their bids with respect to price in order for the Boundary customers to take advantage of the low prices prevailing in the market (Exh. BSG-1, at 12).<sup>10</sup> EnCana provided the lower bid, and the Working Group selected EnCana as the Boundary replacement supplier (*id.* at 13).

The Company states that the Boundary replacement supply with EnCana satisfies the Department’s standard of review in relation to the acquisition of commodity resources due to the following reasons: (1) the supply is consistently ranked at or near the top when compared to other supply bids on the basis of the non-price factors of reliability, flexibility, and viability, and (2) the supply is the least-cost option available to Bay State among all viable alternatives (Exh. BSG-1, at 15-16).<sup>11</sup> In this regard, Bay State indicates that the Company’s selection of the EnCana supply is consistent with the Company’s most recently approved resource planning process. See Bay State Gas Company, D.T.E. 98-86 (2000) (*id.* at 6). In addition, the Company states that the cost of the NEGM agreements was considered in conjunction with the

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<sup>9</sup> Supplier scores for reliability were also based on the contribution to the level of supplier diversity within the portfolio (Exh. DTE 1-7).

<sup>10</sup> The price of gas had declined significantly between the time the RFP was issued and the evaluation period due mainly to the mild winter in the northeast (Exh. BSG-1, at 12).

<sup>11</sup> Consistent with its planning process approved in Bay State Gas Company, D.T.E. 98-86 (2000), the Company used the SENDOUT model to verify that the EnCana supply contract contributes to a least-cost portfolio (Exh. DTE 1-8).

Sales Agreement to determine that the supply choice is least cost (Exh. BSG-1, at 14).

Accordingly, the Company concludes that the three agreements proposed are consistent with the public interest and should be approved (id.).

### III. POSITIONS OF THE PARTIES

#### A. Division of Energy Resources

DOER recommends that the Department approve the Sales Agreement that Bay State entered into with EnCana in this proceeding (DOER Brief at 1). DOER, however, suggests that Bay State be required to include in its distribution gas tariff and Terms and Conditions a condition to hold annual face-to-face meeting with marketers to discuss its resource portfolio, resource plans, and any future supply and capacity resource decisions (id. at 1-3). DOER notes that although Bay State “sent out the mandatory letter to marketers advising of upcoming decisions, as required by the Terms and Conditions of its tariff,” the Company received little or no input from marketers regarding the replacement contract and the disposition of the Tennessee Gas Pipeline Company capacity to be used to transport the supply “because the letters sent to marketers did not reach the appropriate people at the marketing companies” (id. at 2, citing Exhs. DOER 1-8; DOER 1-9). DOER believes that face-to-face meetings between the Company and marketers will improve the flow of information between the parties (id.).

DOER did not submit any objection to the Agency Agreement, the Management Services Agreement, or the Joint RFP process regarding its fairness, openness, or transparency.

B. Company

Bay State states that is not opposed to holding annual meetings with active marketers in its service territory and to amend the Company's Terms and Conditions to add language requiring such an annual meeting (Company Reply Brief at 1). However, Bay State suggests that any such change should be uniform across LDCs, consistent with the Department's desire that tariff terms and conditions be consistent across all Massachusetts LDCs to the extent possible (id.).

IV. STANDARD OF REVIEW

In evaluating a gas utility's resource options for the acquisition of commodity resources as well as for the acquisition of capacity under Section 94A, the Department examines whether the acquisition of the resource is consistent with the public interest. Commonwealth Gas Company, D.P.U. 94-174-A at 27 (1996). In order to demonstrate that the proposed acquisition of a resource that provides commodity and/or incremental resources is consistent with the public interest, an LDC must show that the acquisition (1) is consistent with the company's portfolio objectives, and (2) compares favorably to the range of alternative options reasonably available to the company and its customers, including releasing capacity to customers migrating to transportation, at the time of the acquisition or contract negotiation. Id.

In establishing that a resource is consistent with the company's portfolio objectives, the company may refer to portfolio objectives established in a recently approved resource plan or in a recent review of supply contracts under G.L. c. 164, § 94A, or may describe its objectives in the filing accompanying the proposed resource. Id. In comparing the proposed resource acquisition to current market offerings, the Department examines relevant price and non-price



attributes of each contract to ensure a contribution to the strength of the overall supply portfolio. Id. at 28. As part of the review of relevant price and non-price attributes, the Department considers whether the pricing terms are competitive with those for the broad range of capacity, storage, and commodity options that were available to the LDC at the time of the acquisition, as well as those opportunities that were available to other LDCs in the region. Id. In addition, the Department determines whether the acquisition satisfies the LDC's non-price objectives, including, but not limited to, flexibility of nominations and reliability and diversity of supplies. Id. at 29.

#### IV. ANALYSIS AND FINDINGS

##### A. The Request For Proposal Process

The bid solicitation and evaluation process followed by Bay State and the Working Group in this proceeding was similar to the process approved in recent proceedings. See The Berkshire Gas Company, D.T.E. 02-19, at 11 (2002); The Berkshire Gas Company D.T.E. 01-41, at 14 (2001); The Berkshire Gas Company, D.T.E. 99-81 (1999), at 3-5; Boston Gas Company, D.T.E. 99-76 (1999), at 20-22. In determining whether the RFP process was fair, open, and transparent, the Department notes that potential bidders were notified on the specifics of how each bid would be evaluated. Specifically, the evaluation process was clearly stated to each potential bidder, evaluation criteria were provided, and there was an opportunity for bidders to request clarification from the Working Group on both the evaluation criteria and the RFP process itself. In addition, the bids were evaluated and the winning bid selected based on the criteria set forth in the RFP. Thus, the Department finds that the RFP process was transparent.

The Company has received no objections from potential bidders to indicate that a bidder was unfairly excluded from initial consideration or that a bid was unfairly evaluated.

Accordingly, the Department finds that the RFP process as entered into by Bay State and the Working Group was fair and open. Having found that the RFP process was conducted in a fair, open, and transparent manner, the Department approves the RFP process as appropriately conducted. Finally, our review of the responses to the RFPs indicates that the Company's proposal compares favorably to current market offerings considering price and non-price factors, as well as current market conditions facing the Company at the time of the execution of the Agreement.

B. Sales Agreement

The Department's review of Bay State's proposal indicates that the Sales Agreement is consistent with the Company's resource portfolio objectives established in the Company's most recent Forecast and Supply Plan in Bay State Gas Company, D.T.E. 98-86 (2000). Under the proposed Sales Agreement, EnCana will provide Bay State with 10,471 Dth per day, on a firm basis, to replace a Boundary resource that expires on January 15, 2003. The replacement resource will enable the Company to continue to provide reliable service to its customers.

The Department finds that the competitive solicitation process which led to the selection of EnCana as the winning bid ensured that Bay State obtained a least-cost resource consistent with its portfolio objectives. The EnCana resource compares favorably to the range of alternatives reasonably available to the Company and its customers at the time of the agreement and enhances the diversity of the Company's resource portfolio. Furthermore, we find that Bay State's participation in the Working Group ensured that the Company enjoyed substantial

economies of scale in securing a least-cost replacement resource.

The Department finds that the Sales Agreement is consistent with the Company's resource portfolio objectives and compares favorably to the range of alternatives reasonably available to the Company and its customers at the time of the agreement. Accordingly, the Department finds that the Sales Agreement is consistent with the public interest, and we approve the Company's proposal.

C. Agency and Management Services Agreements

We conclude that the services to be performed under the Agency and Management Services Agreements are necessary and consistent with Bay State's portfolio objectives established in the Company's approved Forecast and Supply Plan. Bay State Gas Company, D.T.E. 98-86 (2000).

The Department is aware that NEGM has had a long working relationship with the Working Group dating back to over 20 years, and that NEGM has substantial Canadian gas contracting expertise. Furthermore, the services that NEGM shall provide under these Agreements are a continuation of the services that NEGM currently provides to the Company under the Boundary agreement. NEGM has offered to continue to provide these services at the same rate that it now charges under the Boundary agreement.

For these reasons, the Department approves the Agency and Management Services Agreements in this proceeding. The Department, however, directs Bay State to conduct a separate solicitation to test the market to see what offerings it could get before renewing these Agreements with NEGM. Alternatively, prior to renewing the Agency and Management Services Agreements, Bay State could provide evidence to show that there is no other entity

that is capable of providing similar services as NEGM.

D. DOER's Concerns

Regarding DOER's suggestion to amend the Company's Terms and Conditions to mandate annual meetings with marketers, the Department finds that such a change is beyond the scope of this proceeding, and therefore rejects it. In Gas Unbundling, D.T.E. 98-32-B (1999), the Department requested the Massachusetts Gas Unbundling Collaborative ("Collaborative") to develop a mechanism to include affected parties in LDC capacity management decisions. The Collaborative is the appropriate forum to address whether a revision to the Terms and Conditions is appropriate for all LDCS. Further, the Department finds that opportunities currently exist for marketers and other affected parties to participate in capacity management decisions. In particular, marketers have the opportunity to intervene in the Forecast and Resource Plans submitted by the LDCs pursuant to G.L. c. 164, § 69I, as well as capacity and commodity acquisition proceedings submitted pursuant to G.L. c. 164, § 94A.

V. ORDER

Accordingly, after due notice, hearing, and consideration, it is hereby

ORDERED: That the gas sales agreement with EnCana Corporation, and agency agreement and management services agreements with Northeast Gas Markets LLC are APPROVED. These contracts are: (1) a gas sales agreement between Bay State Gas Company and EnCana Corporation; (2) an agency agreement between Bay State Gas Company and Northeast Gas Markets LLC; and (3) a management services agreement between Bay State Gas Company and Northeast Gas Markets LLC.

By Order of the Department,

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Paul B. Vasington, Chairman

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James Connelly, Commissioner

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W. Robert Keating, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

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Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order, or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order, or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order, or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5 Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).